HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

WRIT PETITION No.3852 of 2006

31-07-2006

Between:

Jarupala Rukamma .. Petitioner.

and

1. The Collector and District Magistrate,
   Adilabad Distraict and others.

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Respondents.

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ORDER (Per Hon'ble Sri Justice D.Apparao):

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Jarupala Devi was ordered to be detained by the 2nd respondent-District Collector and District Magistrate, Adilabad District, in Rc.No.B1/55/2006/ESH, dated 09-02-2006 under Section 3(1) and (2) read with Section 2(a) & (b) of A.P.Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffaic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the father of Jarupala Devi, challenges the validity of the order of the 1st respondent, as illegal, arbitrary, unconstitutional and violative of Articles 14, 19, 21 and 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of habeas corpus.

3. The order of detention was based on the following grounds:-

(1) On 21-10-2005 at about 11.30 A.M. the Excise officials found the detenu carrying 10 liters of I.D.Liquor in plastic can. He was arrested and the contraband was seized. A case was registered vide C.O.R.No.460/2005-06, dated 21-10-2005 under Section 7 (A) read with Section 8 (b) of the A.P. Prohibition Act, 1995. When the samples of the contraband was sent to Chemical Examiner, who analysed and opined that it was illicitly distilled liquor containing acidity, fusal oil and allied impurities and unfit for human

consumption. A charge sheet was also filed and the case is pending trial.

(2) On 26-12-2005 at about 11.30 A.M. the Excise officials searched the house of detenu and recovered two plastic cans containing 10 liters; of I.D.Liquor and 10 earthern pots each containing 50 lites of fermented jaggery wash. He was arrested and the contraband was seized. A case was registered in C.O.R.No.564/2005-06, dated 26-12-2005 under Section 34 (a) of A.P.Excise Act, 1968. When the sample of the contraband was sent to the Chemical Examiner, he analysed and opined that the sample was illicitly distilled liquor containing acidity, fusal oil and other allied impurities and injurious to health and unfit for human consumption. A charge sheet was also filed and the case is pending trial.

4. The detaining authority considering the material placed before him, opined that there exists a case against the detenu for invoking the provisions under the Act as all his activities were dangerous to public health and prejudicial to the maintenance of public order.

5. The detention order was approved by the Government in G.O.R.T.No.851 GA (L & O II) Dept. dated
18-02-2006. It was submitted before the Advisory Board and orders are being awaited. Even before passing of the order, this writ came to be filed.

9. The father of the detenu challenged the detention on the grounds that the detention order cannot be passed where small quantities are involved. Two stray incidents are not sufficient to detain under the said Act. The details of percentages of proof of

spirit of alcohol, acidity, fusel oil or other impurities were not mentioned. Grounds of detention, not specifically mentioning percentage of the above constituents, invalidate the order. The grounds are stale and remote. They were petty offences which could be tried under the Excise and Prohibition Laws.

10. The learned counsel for the detenu contended that the detaining authority must be satisfied that the proposed detention is likely to indulge in such illegal activities in future also. This is a satisfaction that could be reasonably arrived at by the detaining authority only by examining the material that is produced by the authority proposing his detention. In such a process, a detaining authority may not always take into consideration a stray or solitary incident which may not give rise to a reasonable apprehension or satisfaction as to such future act of the proposed detenu. Therefore, it is necessary for the authority proposing the detention of a person under the Act to produce such material, which shows the continuous previous illegal activities of the proposed detenu which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other.

11. This aspect of the matter is covered by a decision of the Supreme Court in **COLLECTOR & DISTRICT MAGISTRATE, W.G.DISTRICT, ELURU, A.P. AND OTHERS v. SANGALA KONDAMMA**[1]**.** It was a case where the order of detention was based on grounds relating to five incidents of boot-legging. The High Court held that two out of five grounds of detention were stale grounds and since the said two stale grounds could not be

separated from the other grounds, the satisfaction of the detaining authority got vitiated and therefore the order of detention could not be sustained. Allowing the appeal, the Supreme Court held that if the facts placed before the detaining authority are proximate to each other and the last of the facts mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside.

12. In the instant case, the order of detention was passed on 09-02-2006. It is seen that between the period 21-10-2005 and 26-12-2005, the detenu was involved in two cases of boot-legging, which are reasonably proximate to each other and the last of the incident being proximate to the order of detention, it cannot be said the detaining authority was not justified in treating the two incidents as stale by taking them in isolation. The order of detention being proximate enough to each other, show the continuity of the acts of detenu. Therefore, we do not see any flaw in the order of detention nor can we say that the grounds are stale.

13. The learned counsel for the detenu contended that there is no material to show that the activities of the detenu as a boot-legger affect adversely or likely to affect adversely the maintenance of public order. A commission of an offence will not necessarily come within the purview of 'public order'. The offence alleged against the detenue in the order of detention and also the allegations made in the charge sheet could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of his contention, he relied **PIYUSH v. POLICE COMMISSIONER, AHMEDABAD**[2]**.** That was a case where the detenu was found transporting foreign liquor. It would not cause widespread danger

to life or public health. Obviously, considering the nature of substance that was transported, it was held that the conduct of the person does not create panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

14. The learned counsel relied **OMPRAKASH v. COMMISSIONER OF POLICE**[3] for the same proposition where the detenue was found possessing deadly weapons beating innocent citizens. Creating fear by threatening and carrying on criminal anti-social activities by selling country and foreign liquor. Relying the earlier decision referred to, it was held that the materials available on record were not sufficient and adequate for holding that the alleged prejudicial activities of the detenue have either affected adversely or likely to affect adversely the maintenance of public order.

15. In **HARPREET KAUR v. STATE OF MAHARASHTRA**[4], the Supreme Court while dealing the case of detenue indulging in transporting of illicit liquor and distributing the same in the locality and was keeping arms with him while transporting liquor, it was held:

> "The activities of the detenu were not merely bootlegging but went further to adversely affect the even tempo of the society by creating a feeling of insecurity among those who were likely to depose against him as also the law enforcement agencies. The fear psychosis created by the detenu in the witnesses was aimed at letting the crime go unpunished which has the potential of the society, and not merely some individual, to suffer. The activities of the detenu, therefore, squarely fall within the deeming provision enacted in the Explanation of Section 2 (a) of the Act, and as such the activities were not merely

prejudicial to the maintenance of 'law and order' but were prejudicial to the maintenance of "public order".

The Explanation to Section 2 (a) brings into effect a legal fiction as to the adverse effect on 'public order'. It is the fall-out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act."

16. Coming to the facts, the expert opinion is unambiguous and specific that it is unfit for human consumption. A Division Bench of this Court in **B.VIJAYA KUMAR v. SECRETARY TO GOVERNMENT**[5], while considering a case where the expert opined that it was unfit for human consumption, held:

"It is implied that the liquor would cause widespread danger to life or public health. It cannot be gainsaid that liquor unfit for human consumption would necessarily cause grave and widespread danger to life or public health. If it is allowed to be sold in the State and consumed by the public at large. " In other words "that if the report is indicative of the fact that illicitly distilled liquor is unfit for human consumption, it impliedly means that consumption of such a liquor would cause danger to life and public health."

17. In the above said case, the detaining authority had referred only one case when contention was raised that the ground of detention was only one and therefore, the requirement of phrase in the definition of Section 2 (a) of the Act was not satisfied. It was held:

"Even a single activity of a person referred to in Clause 2 (a) of the Act would have the effect of acting in any manner prejudicial to the maintenance of public order. Even a single activity which falls within Clause 2 (a) of the Act would be enough to bring the case within the ambit of Section 3 (1) of the Act."

18. In order to appreciate the proposition, Section 2 (a) of

the Act is extracted hereunder:

> "(a) "Acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:
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> Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia,* if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any action thereof or a grave or widespread danger to life or public health."

The learned Judge held:

> "From a plain reading of the definition, it is clear that the phrase "acting in any manner prejudicial to the maintenance of public order" takes in its fold the activity of a hoot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land grabber, who is engaged or is making preparation for engaging any of its activities as such which affect adversely or likely to affect adversely the maintenance of public order. The explanation appended to the above definition clarified that for the purpose of Clause 2(a), 'public order' shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, *inter alia,* if any of the activities of any person referred to in the said clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

19. Following the said case, a Full Bench of this Court in a decision reported in **DODDI SHARADA v. COLLECTOR AND DISTRICT MAGISTRATE**[6], opined:

> "Mere sale of illicit liquor not a relevant ground for detention. However, if detaining authority is satisfied on material before him that such illicit liquor would cause danger to public health, it is a relevant ground for detention."

It further held:

> "The opinion of the public Analyst that sample of illicit liquor seized is not potable or not fit for human consumption is relevant material for arriving at subjective satisfaction by detaining authority that it would cause danger to public health for detaining a person under preventive detention."

20. The learned counsel for the petitioner contended that, in the instant case, the detaining authority relying report of the chemical examiner, opined that it was illicitly distilled liquor unfit for human consumption and injurious to public health, causing prejudicial to the maintenance of public order and tranquility in public life without mentioning percentage of constituents. The order of detention therefore must be struck down. In the decision relied above in the case of **Doddi Sharada's case (6 supra),** the learned Judge considered this aspect.

> "In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of Explanation to Section 2 (a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, sit is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health."

21. Since this is a case where the illicit arrack transported

by the detenu was harmful and it contains substance which would cause danger to the life of public health, it would attract Section 3 (1) of the Act. The dicta laid by Full Bench decision of this Court in **Doddi Sharada's case** (6 supra), applies in all fours to the facts of the present case. Since there is a danger to public health or life, it cannot be said that the detenu had not acted in a manner prejudicial to the maintenance of public order. Therefore, we uphold the order of detention.

22. Accordingly, the Writ Petition is dismissed. No costs.

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(J.CHEMALESWAR, J)

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July 31, 2006 **(D.APPARAO, J)**

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[1] 2005 (3) Supreme Court Cases 666

[2] AIR 1989 SUPREME COURT 491

[3] AIR 1990 SUPREMECOURT 496

[4] (1992) 2 SUPREME COURT CASES 177

[5] 1997 (3) ALD 266 (D.B.)

[6] 2005 (2) ALT 244 (F.B.)